

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
Auto Compliance Bureau
James McGuire, Bar No. 165836
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: 415-538-4163
Facsimile: 415-904-5490

Attorneys for The California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

LINCOLN GENERAL INSURANCE
COMPANY; KINGSWAY FINANCIAL
SERVICES,

Respondent

File No. 03-0058 CSB

ORDER TO SHOW CAUSE AND
STATEMENT OF CHARGES/ACCUSATION

WHEREAS, the Insurance Commissioner of the State of California (hereinafter referred to as "the Commissioner") conducted an investigation of Lincoln General Insurance Company, a subsidiary of Kingsway Financial Services (hereinafter referred to collectively as "Respondent") for the purposes of evaluating Respondent's compliance with the California Insurance Code and the California Code of Regulations; specifically, the Fair Claims Settlement Practices Regulations;

WHEREAS, in the course of this investigation, the Department identified 26 claims, filed with Respondent between January 1, 2002 and September 3, 2003, in which Respondent violated one, or more, sections of the California Insurance Code and the Fair Claims Settlement Practices Regulations;

NOW, THEREFORE, pursuant to the provisions of Section 790.05 of the California Insurance Code, Respondent is ordered to appear before the Commissioner and show cause, if

1 any exists, why the Commissioner should not issue an Order to the Respondent directing
2 Respondent to Cease and Desist from engaging in the methods and practices set forth in the
3 Statement of Charges, paragraphs “a” through “q,” inclusive. The date and time of this hearing
4 are to be determined by the Department and the Respondent.

5 6 **STATEMENT OF CHARGES/ACCUSATION**

7 **I**

8 As a result of this investigation, the Insurance Commissioner of the State of California, in
9 his official capacity, now alleges that Respondent is, and at all relevant times has been, the holder
10 of a Certificate of Authority issued by the Commissioner and, pursuant thereto, is authorized to
11 transact the business of insurance in California;

12 **II**

13 As a further result of this investigation, the Insurance Commissioner of the State of
14 California alleges that Respondent has violated the California Insurance Code, Section 790.03, et
15 seq. and the Fair Claims Settlement Practices Regulations (California Code of Regulations, Title
16 10, Chapter 5, Section 2695.1, et. seq.), which implement Section 790.03, et. seq., as follows:

- 17 (a) Respondent has failed to adopt and implement reasonable standards for the prompt
18 investigation and processing of claims, a fact that is reflected in 3 of the claims
19 reviewed in the Department’s investigation, in violation of California Insurance Code
20 Section 790.03(h)(3);
- 21 (b) In one instance, Respondent failed to provide an insured with the Auto Body Repair
22 Consumer Bill of Rights, in violation of California Insurance Code Section 1874.87;
- 23 (c) In 5 instances, Respondent’s claims administrator, acting on behalf of Respondent,
24 sent letters to insureds which failed to identify Lincoln General Insurance Company as
25 the insurer, in violation of California Insurance Code Section 880;
- 26 (d) In 7 instances, Respondent failed to include all documents, notes and work papers in
27 the claim file in such detail that the events pertinent to the claim could be
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1 reconstructed and the licensee's actions determined, in violation of `Section 2695.3(a)
2 of the California Code of Regulations;

3 (e) In one Instance, Respondent failed to record in the claim file the date a material or
4 relevant document was received, in violation of Section 2695.3(b)(2) of the California
5 Code of Regulations;

6 (f) In 15 instances, Respondent failed to provide a timely or complete written response to
7 written inquiries from the Department, in violation of Section 2695.5(a) of the
8 California Code of Regulations;

9 (g) In 5 instances, Respondent failed to respond to communications from claimants within
10 15 calendar days of the receipt of the communications, in violation of Section
11 2695.5(b) of the California Code of Regulations;

12 (h) In 1 instance, Respondent failed to acknowledge receipt of the notice of claim within
13 15 days of receiving such notice, in violation of Section 2695.5(e)(1) of the California
14 Code of Regulations;

15 (i) In one instance, Respondent failed within, 15 days of receiving the notice of claim, to
16 provide the claimant with the forms, instructions and assistance necessary to prove the
17 claim, in violation of Section 2695.5(e)(2) of the California Code of Regulations;

18 (j) In 1 instances, Respondent failed to begin an investigation of the claim within 15 days
19 of receiving the notice of claim, in violation of Section 2695.5(e)(3) of the California
20 Code of Regulations;

21 (k) In 4 instances, Respondent, upon receiving proof of claim, failed to accept or deny the
22 claim within 40 days, in violation of Section 2695.7(b) of the California Code of
23 Regulations;

24 (l) In 1 instance, Respondent denied a portion of the claim and failed to provide the
25 claimant with a written statement setting forth the factual and legal basis for the partial
26 denial, in violation of Section 2695.7(b)(1) of the California Code of Regulations;
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- 1 (m) In two instances Respondent's written notification of the documentation of the claim
2 failed to include a statement that, if the claimant believed the claim had been
3 wrongfully denied or rejected, the claimant had the right to have the determination
4 reviewed by the Department, in violation of Section 2695.7(b)(3) of the California
5 Code of Regulations;
- 6 (n) In 7 instance, Respondent did not accept or deny the claim within 40 days, pursuant to
7 Section 2695.7(b) and failed to provide the claimants with written notice of the need
8 for additional time to determine the claims, in violation of Section 2695.7(c)(1) of the
9 California Code of Regulations;
- 10 (o) In 1 instance, Respondent accepted a claim and failed to tender payment of the claim
11 within 30 days in violation of Section 2695.7(h) of the California Code of
12 Regulations;
- 13 (p) In 1 instance, Respondent, after determining that the insured was principally at fault in
14 a vehicle accident, failed to provide written notice to the insured of the results of the
15 investigation of the accident, in violation of Section 1695.13(e)(2) of the California
16 Code of Regulations;

17 WHEREFORE, petitioner prays for judgment against the Respondent as follows:

- 18 1. An order to cease and desist from engaging in the unfair acts and practices set forth
19 above;
- 20 2. For acts in violation of the Insurance Code, Sections 790.03, 1874.87 and 880 and the
21 Fair Claims Settlement Practices Regulations set forth in CCR 2695.1, et. seq., a civil
22 penalty in the amount of \$50,000. and costs in the amount of \$14,279.

23 Dated this 24th day of May, 2004.

24 JOHN GARAMENDI
25 INSURANCE COMMISSIONER

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27 By:

28 James McGuire
Staff Counsel

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